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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

WAYNE McFARLIN,

Plaintiff,

v.

EDWARD GORMLEY, an individual; CITY OF McMinnville, a Municipal Corporation; CITY COUNTY INSURANCE SERVICES TRUST; ROD BROWN, an individual; PUBLIC SAFETY LIABILITY MANAGEMENT INC., an Oregon corporation; WALDO FARNHAM,

Defendant,

Case No.: 3:06 CV 01594-HU

DEFENDANT WALDO FARNHAM'S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION TO STRIKE EVIDENCE SUBMITTED IN RESPONSE TO FARNHAM'S MOTION FOR SUMMARY JUDGMENT

Defendant Waldo Farnham (Farnham) provides the following Memorandum of Law in support of his Motions to Strike. Much of the evidence provided by plaintiff in opposition to Farnham's motion for summary judgment is irrelevant and inadmissible hearsay. As such, it can not be considered by this Court in ruling on the present motion.

Page 1 – DEFENDANT FARNHAM'S MEMO IN SUPPORT OF HIS MOTION TO STRIKE EVIDENCE SUBMITTED IN RESPONSE TO FARNHAM'S MSJ

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MEMORANDUM OF LAW IN SUPPORT OF MOTIONS TO STRIKE

MOTIONS TO STRIKE

Motion No. 1 – Joinder in Gormley’s and City’s Motions

Defendants Gormley and the City of McMinnville (City) have filed motions to strike evidence from the summary judgment record. Defendant Farnham joins in the City’s motions one through three (including all sub parts) for the reasons stated therein.¹

Motion No. 2 – MacFarlin Affidavit, Exhibit D, Pages 1-2.

In Exhibit D to his affidavit, plaintiff asserts that selected statements from “Waldo Farnham Complaint to Mayor Gormely” are false or misleading. As to Statement 1, concerning low morale in the police department, plaintiff offers five out-of-court statements for the truth of the matters they assert, none of which falls within any exception to the hearsay rule. As such, those statements are inadmissible hearsay under Federal Rule of Evidence (F.R.E.) 801, 802, and 803. Further, plaintiff sets out what he identifies as the content of an e-mail exchange among Kent Taylor, Steve McCartney and himself. Those statements also are hearsay not subject to any exception to the hearsay rule and thus are inadmissible under F.R.E. 801, 802, and 803.

Motion No. 3 – Exhibit D, Page 2-3.

To show that Statement 2, concerning staff opinions as to plaintiff’s trustworthiness is misleading, plaintiff offers his own opinion as to his own trustworthiness, which is not relevant and, as such, is inadmissible under F.R.E. 401

¹ If the court grants the City’s motions to strike Exhibits A, B, C and D to plaintiff’s Affidavit, in which Farnham has joined, then the court need not address defendant Farnham’s additional motions to strike, all of which address the deficiencies in plaintiff’s Exhibit D.

and 402. He also purports to quote excerpts from his performance evaluations, which are hearsay not subject to any exception. As such, they are inadmissible under F.R.E. 801, 802, and 803.

Motion No. 4 – Exhibit D, Page 3-4

The evidence plaintiff offers to establish the falsity of Statement 3 purports to be the content of an email that he authored. Again, that evidence is hearsay to which no exception applies and, thus, is inadmissible under F.R.E. 801, 802, and 803.

Motion No. 5 – Exhibit D, Page 4

The only evidence plaintiff offers to establish the falsity of Statement 4 – that plaintiff commonly uses work plan assignments as disguised discipline – is his unsupported statement that such conduct is contrary to staff training. Not only does that statement lack foundation, but it is not relevant to the issue of whether the statement is true or false. Accordingly, the statement is inadmissible under F.R.E. 401 and 402.

Motion No. 6 – Exhibit D, Page 4-5

To show the falsity of Statement 5 – that some staff believe that plaintiff does not welcome ideas or suggestions and sense that he targets those who disagree with him – plaintiff again purports to quote excerpts from performance reviews and an undated article he wrote for an unspecified publication. Again, that “evidence” is hearsay that is not subject to an exception and thus is inadmissible under F.R.E. 801, 802 and 803.

Motion No. 7 – Exhibit D, Page 6.

To establish the falsity of a statement about the purchase of new handguns, plaintiff purports to recite facts included in the “attached 2005-2006 PD Budget Proposal.” But there is no such attachment, no effort to authenticate the non-existent

Page 3 – DEFENDANT FARNHAM'S MEMO IN SUPPORT OF HIS MOTION TO STRIKE EVIDENCE SUBMITTED IN RESPONSE TO FARNHAM'S MSJ

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attachment, and the statements from that document that plaintiff purports to incorporate are inadmissible hearsay. Accordingly, plaintiff's statements are inadmissible under F.R.E. 801, 802, 803, and 901.

Motion No. 8 – Exhibit D, Pages 7-10

The remainder of Exhibit D consists of what plaintiff characterizes as the content of numerous emails to and from a variety of different people. Again, that evidence is hearsay to which no exception applies and, as such, is inadmissible under F.R.E. 801, 802, and 803.

DATED: November 30, 2007

COSGRAVE VERGEER KESTER LLP

/s/ James M. Maldonado

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Page 4 – DEFENDANT FARNHAM'S MEMO IN SUPPORT OF HIS MOTION TO STRIKE
EVIDENCE SUBMITTED IN RESPONSE TO FARNHAM'S MSJ

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing DEFENDANT FARNHAM'S MEMORANDUM IN SUPPORT OF HIS MOTION TO STRIKE EVIDENCE SUBMITTED IN RESPONSE TO FARNHAM'S MOTION FOR SUMMARY JUDGMENT on the date indicated below by:

- mail with postage prepaid, deposited in the US mail at Portland, Oregon,
- hand delivery,
- facsimile transmission,
- overnight delivery,
- electronic filing notification;

I further certify that said copy was placed in a sealed envelope delivered as indicated above and addressed to said attorney(s) at the address(es) listed below:

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DATED: November 30, 2007

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